

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Lars R. Damgaard et al.

Application No.: 10/540,349

Confirmation No.: 2540

Filed: September 1, 2005

Art Unit: 1657

For: DEVICE AND METHOD FOR
NON-INVASIVE MEASUREMENT OF THE
INDIVIDUAL METABOLIC RATE OF A
SUBSTANTIALLY SPHERICAL
METABOLIZING PARTICLE

Examiner: Clark D. Petersen

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action mailed May 23, 2007, the deadline for response thereto being August 23, 2007, Applicant submits the following reply.

In the Office Action mailed May 23, 2007, the Examiner imposed a restriction requirement and directed Applicant to elect between the following groups of claims for prosecution on the merits:

Group I, namely claims 1-3, 8, 10, 12-13, 21, 30-31 and 68, drawn to a device;

Group II, namely claims 27, 36-38, 40, 42-43, 45, 64-67 and 70, drawn to a method;

Group III, namely claims 48, 49, 51-53 and 57, drawn to a method; and

Group IV, namely claims 60-63, drawn to a method.

In response thereto, Applicant hereby elects the method claims of Group I for further prosecution on the merits. This election is made without traverse, and Applicant reserves the right to file one or more divisional applications relating to the nonelected subject matter of this patent application.

In a second portion of the Office Action, the Examiner imposed a genus/species type restriction requirement wherein Applicant is required to elect a particular species of metabolizing particle from the group of particles set forth in claim 45 for prosecution. Applicant respectfully submits that in view of the fact that the claims are all now limited to a device, the requirement with regard to election of a particle is moot, since the group of particles listed in the claims, for example claim 45, are with regard to the method claims of Groups III-IV. Should the Examiner still be of the opinion that an election of species is still required, Applicant provisionally elects the species of metabolizing particle comprising an embryo. As it stands, all of the elected apparatus claims read on the elected embryo species, and these claims are also generic to all of the other species.

Any questions or comments the Examiner may have should be directed to the undersigned attorney.

Dated: 8-17-07

Respectfully submitted,

By

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